

also that the court sometimes, as a condition of giving costs, requires from a litigant an undertaking not to bring an action. It is always open to the litigant to refuse to accept costs on any such condition, and wherever a suitor is entitled to relief *ex debito justitiæ* the court has no right to clog the relief with any such conditions.

It was on this principle too that the procedure by counter-claim seems to have been introduced, whereby a defendant is enabled to assume the character of a plaintiff without bringing a cross action; but a counter-claim, for all practical purposes of giving the court jurisdiction to determine the matters in controversy in, or give the relief claimed by, the counter-claim, is a cross action.

It would occasionally seem, however, that there is some danger of this fundamental principle of litigation being lost sight of in Ontario, and, under the growing laxity of practice which prevails under the Judicature Act, thoughtlessly to assume that it no longer exists, and that a court is now competent to adjudicate, and make judgments, against persons who have neither invoked, nor are properly amenable to its jurisdiction, or respecting claims or controversies which have not been presented for adjudication. But we may ask if Smith, having no shadow of title, bring an action against Brown to recover possession of land, on what principle can Brown be thereby involved in an enquiry as to his title as against some third person who is made a co-defendant, but who makes no claim adverse to Brown: and does it make any material difference if it is a fund instead of land which is the subject matter of Smith's action? The jurisdiction of the court is invoked by Smith to determine whether he is entitled to the land or fund, and if he fail to establish any claim, what right has the court, unless a counter-claim be filed, to exercise any other jurisdiction over the subject matter of the controversy than to dismiss Smith's action? The mere fact that Smith has made a wrongful claim does not surely give the court unlimited jurisdiction to deal with the subject matter of the litigation, and the mere fact that there are other claimants who have not invoked the jurisdiction of the